

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION
1:21-cv-00320-MR-WCM

JOHNNIE R. SIMMONS, JR.)

Plaintiff,)

v.)

SHELBY POLICE DEPARTMENT,)

NICHOLAS MARLOW)

Shelby Police Officer/Security at Walmart,)

JOHN DOE 1)

Shelby Police Officer/Security at Walmart Store))

Defendants.)

ORDER

This matter is before the Court on a letter filed by Plaintiff Johnnie R. Simmons, Jr. ("Plaintiff"), which the undersigned construes as a motion (the "Motion," Doc. 8) requesting that the United States Marshals Service serve Defendant Nicholas Marlow.

On November 15, 2021, Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs was granted. See Doc. 3. Plaintiff was directed to prepare summonses for Defendants and submit those summonses to the Clerk. Id. The Order further provided that upon receipt of the summonses, the Clerk would deliver process to the United States Marshals Service, and that the Marshals Service would serve process upon Defendants. Id.

On November 15, 2021, a Summons in a Civil Action was issued by the Clerk to Nicholas Marlow. Doc. 4.

In the Motion, Plaintiff requests that the Court order the Marshals Service to serve Defendant Marlow, though Plaintiff now lists a different address for Defendant Marlow. Doc. 8.

It is not clear from the Motion whether Plaintiff believes that Defendant Marlow cannot be served at the address previously provided. Rather, Plaintiff states that “sources that are with the press and very reliable say that the Defendant Nicholas Marlow works for Gaston County in Gastonia, N.C.” Doc. 8 at 1. In addition, the Motion is silent as to whether Plaintiff has conferred with the Marshals Service regarding these issues.

As noted, service by the United States Marshals Service was previously authorized in this matter. However, Plaintiff remains responsible for ensuring that the defendants are served in accordance with the Rules of Civil Procedure and the undersigned declines to direct the Clerk to issue a new summons and to instruct the Marshals Service to serve that summons on Defendant Marlow based upon the scant information in the Motion.

IT IS THEREFORE ORDERED that the Motion (Doc. 8) is **DENIED WITHOUT PREJUDICE**. Plaintiff may renew his request for the issuance of an additional summons for Defendant Marlow after Plaintiff has consulted with the United State Marshals Service and if that agency requires an additional summons.

Signed: January 3, 2022

A handwritten signature in black ink, reading "W. Carleton Metcalf", written over a horizontal line.

W. Carleton Metcalf
United States Magistrate Judge

